

February 16, 2021

Submitted electronically to [pubcom@finra.org](mailto:pubcom@finra.org)

Jennifer Piorko Mitchell  
Office of the Corporate Secretary  
FINRA  
1735 K Street, NW  
Washington, DC 20006-1506

**Re: FINRA Regulatory Notice 20-42, FINRA Seeks Comments on Lessons from the COVID-19 Pandemic**

Dear Ms. Mitchell:

LPL Financial LLC (“LPL” or “the Firm”) appreciates the opportunity to provide comments to the Financial Industry Regulatory Authority (“FINRA”) in response to Regulatory Notice 20-42<sup>1</sup>. LPL commends FINRA for seeking feedback from member firms after an unprecedented year dealing with the coronavirus pandemic.

LPL also thanks FINRA for working with member firms to protect the health and safety of associated persons and investors during the pandemic, while ensuring that the public maintained access to financial services. The prompt and targeted regulatory relief from FINRA and other regulators was critical in enabling LPL, and the financial professionals it serves, to meet successfully the challenges of the past year. As discussed below, the Firm believes that lessons learned during the pandemic highlight important opportunities to modernize FINRA’s rules.

## **I. Overview of LPL**

LPL is a leading retail investment advisory firm, independent broker-dealer and registered investment advisor custodian. We serve more than 17,000 independent financial professionals and over 700 financial institutions by providing them with the technology, research, clearing and compliance services, and practice management programs they need to create and grow thriving practices. LPL enables them to provide objective guidance to millions of American families seeking wealth management, retirement planning, financial planning and asset management solutions.

We believe that objective financial guidance is a fundamental need for everyone. We enable our financial professionals to focus on what they do best, which is to create the personal, long-term relationships that are the foundation for turning life’s aspirations into financial realities. LPL and its affiliates have more than 4,300 full-time employees working to ensure that our associated financial professionals have the resources they need.

## **II. Comments in Response to RN 20-42**

LPL appreciates the opportunity to provide feedback to FINRA on the lessons that we have learned during the coronavirus pandemic. We are members of the Securities Industry and Financial

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<sup>1</sup> FINRA Regulatory Notice 20-42, *FINRA Seeks Comment on Lessons From the COVID-19 Pandemic* (Dec. 16, 2020), <https://www.finra.org/rules-guidance/notices/20-42>.

Markets Association (SIFMA) and support the comments submitted by SIFMA in response to RN 20-42. The purpose of this letter is to highlight our feedback relating to Business Continuity Plans, Remote Offices, and Remote Inspections.

## **Business Continuity Plans**

LPL echoes the comments in the SIFMA letter regarding the critical role of Business Continuity Plans (BCP) in ensuring continued operation of firms during the pandemic, and writes to share some observations based on its experiences. LPL's BCP framework is maintained by its Compliance, Legal, and Risk Department, and, in accordance with FINRA Rule 4370, is reviewed and updated at least annually. Individual business units maintain detailed business continuity and disaster recovery (DR) plans. The Firm also conducts tabletop exercises to test its BCP on a regular basis. Typically, LPL completes five tabletop exercises each year: two firm wide tabletops, a cyber-risk tabletop, a technology related tabletop and a management committee leadership tabletop. In addition, the individual business units execute various tabletop exercises throughout the year.

Before the pandemic, our BCP and DR strategies contemplated scenarios in which portions of our workforce would need to work remotely for relatively short periods, such as in the event of a regional or local disaster. We found, however, that with the solid base of our existing BCP, and the capabilities developed through the Firm's robust testing schedule, we were able to pivot quickly and effectively to meet the challenges of the pandemic, including the extended, nationwide shutdown that began in March.

Notwithstanding our success in implementing an effective BCP during the pandemic, there are areas of our BCP that we will look to strengthen. Going forward, our tabletop exercises will include a global pandemic and shutdown. Additionally, LPL will expand its testing to focus more extensively on specific business processes and how they would be impacted by various contingencies, including a pandemic. This will allow LPL and our specific business units to continue to develop "muscle memory" to further the seamless enactment of our BCP in a future event.

## **Remote Work Locations**

LPL, like many firms, shifted rapidly to a work from home footing when the pandemic began. Having most of its employees work remotely was not only protective of the health and safety of these employees, but also of employees who continued, generally because of their specific roles, to work in the Firm's offices, where we implemented measures such as social distancing and daily, hospital-grade cleaning. Many of the financial professionals and institutions that LPL serves also shifted to working from home to protect the health and safety of their offices and staff, while continuing to serve their customers.

This experience has demonstrated that LPL is able to operate fully effectively with substantial numbers of employees working remotely. While we have always had remote employees who worked from home, we plan to expand that option following the pandemic. We believe that the ability to work remotely (including on a hybrid basis in which employees spend part of the week working from home and part working in the office) has important benefits for associated persons, firms, and the financial services industry as a whole. Remote work arrangements provide individuals with greater flexibility to balance professional careers with personal commitments. They also increase access to diverse talent, enabling firms to hire candidates who are best suited for roles, regardless of where they reside. Finally, a remote workforce enhances firms' resiliency and business continuity planning, so that investors can have uninterrupted access to the markets, financial advice, and other financial services.

Technology is a critical factor enabling remote work. LPL employees and financial professionals working remotely (typically from a primary residence) do so through centralized and monitored Firm systems, which they can access only through the Firm's secure network. These systems are used for a wide range of supervision, compliance, and operational functions.

Given current technology and broader trends toward remote work, we urge FINRA to modernize FINRA Rule 3110 in order to facilitate the use of remote locations in a manner consistent with investor

protection. LPL supports the adoption of a risk-based, reasonableness standard of supervision along the lines discussed in the SIFMA letter, one that takes into account the technological capabilities of many member firms and the nature of the activities occurring at remote locations. As discussed in the SIFMA letter, this risk-based standard should incorporate a host of important safeguards, some of which are already reflected in Rule 3110 as it relates to primary residences. For example, the location would not be held out to the public or used for customer meetings, would not be used to handle or maintain customer funds or securities, and firms should consider any disciplinary history or incidence of customer complaints before permitting someone to work remotely. LPL believes that subject to conditions such as these, primary residences and other remote locations generally should not be subject to the registration and inspection requirements applicable to branch offices and offices of supervisory jurisdiction as currently defined in FINRA Rule 3110. LPL also recognizes that there are various approaches to potential rule changes, and that consideration of these issues must be coordinated with the SEC, NASAA, and other stakeholders.

### **Remote Inspections**

Since July 2020, LPL has been carrying out a remote branch inspection program, consistent with the temporary relief initially provided by FINRA in Regulatory Notice 20-08 and now reflected in FINRA Rule 3110.17. We believe that with today's technology, remote branch inspections are generally as effective as in-person inspections in furthering compliance and detecting potential misconduct. Accordingly, we support rule changes, such as those outlined in the SIFMA letter, which would establish minimum requirements and safeguards while also enabling a more risk-based approach to determining how, when, and for which locations inspections are conducted. Many remote locations, particularly primary residences, generally do not warrant inspections for the reasons discussed above.

As a firm with thousands of branch offices across the country, technology has been a major component of our branch inspection program for many years, and we have enhanced our use of technology in order to conduct inspections remotely during the pandemic. LPL uses its established systems, as well as widely available tools such as videoconferencing and the internet, in order to conduct many aspects of branch inspections, including virtual interviews with financial professionals, account reviews, reviews of social media and electronic communications, internet searches, computer reviews, review of centrally maintained documents such as non-electronic correspondence, and others.

In our experience over a number of years, it is through these technology-assisted reviews by well-trained examiners, rather than the in-person component of exams, that most instances of misconduct are detected. At the same time, we recognize that in-person inspections are indispensable in certain cases, and that a system of reasonable supervision should include policies and procedures for determining when to conduct in-person inspections, including surprise inspections. The Firm believes that a risk-based approach to inspection requirements, calibrated to firms' current technology and the limited risks presented by many locations, would be fully consistent with investor protection, and help enable the financial services industry to participate in the broader trend toward remote work.

### **III. Conclusion**

LPL believes that the lessons learned during the pandemic provide an important opportunity to update FINRA's rules as it relates to remote locations and inspections (along with other areas discussed in the SIFMA letter), and that this can be accomplished in ways that are fully consistent with investor protection. In the long term, these changes will help our industry retain and attract a talented and diverse workforce, enhance business continuity, and increase our ability to serve investors.

We appreciate this opportunity to share feedback, and look forward to working with FINRA and other stakeholders on these issues. We also once again thank FINRA for its leadership and its partnership with the industry throughout the pandemic.

If you would like to discuss this letter further or have any questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in cursive script that reads "Michelle Oroschakoff". The signature is written in black ink and is positioned to the right of the word "Sincerely,".

Michelle Bryan Oroschakoff  
Chief Legal Officer